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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.P., a Person Coming Under the
Juvenile Court Law.

B212034

(Los Angeles County
Super. Ct. No. CK65725)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Juvenile Court Referee. Affirmed.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Father L.P. challenges the juvenile court's jurisdictional findings sustaining allegations against him. He claims there is no substantial evidence to support the findings. The Department of Children and Family Services (DCFS) argues the appeal should be dismissed as moot. We decline to dismiss the appeal, but find sufficient evidence supports the jurisdictional findings and affirm that order.

FACTUAL AND PROCEDURAL SUMMARY

In November 2006, DCFS filed a Welfare and Institutions Code section 300 petition to declare one-year-old D.P. and her two older half siblings¹ dependent children. The petition alleged domestic violence between mother and her male companion, physical abuse of the older children by the male companion, substance abuse by mother, and failure of a voluntary maintenance agreement to resolve these problems. There were no allegations against father, who shared joint custody of D.P. with mother.

At the detention hearing, the court ordered a pre-release investigation as to father, and gave DCFS discretion to release D.P. to him. After learning that father had a criminal history, the court placed D.P. with her paternal grandmother. Her half siblings were placed with their paternal grandparents. In February 2007, pursuant to a mediation agreement, the children were declared dependents based on amended allegations that mother's male companion had physically disciplined the two older children and that mother failed to protect them, and that mother has an unresolved history of substance abuse which places the children at risk. Reunification services were ordered for mother and father. Father was given unmonitored day visits with D.P. and was ordered to participate in a parenting program.

Father and mother both complied with their reunification programs, and their visitation progressed to overnight visits with the children. At the 18-month review hearing in May 2008, the court terminated the suitable placement orders, released the two

¹ The two older children, who have a different father, are not the subject of this appeal.

older children to mother, and ordered D.P. released to mother and father under a “home of parent” order.

On September 9, 2008, DCFS filed a section 342 petition as to D.P., alleging that father physically abused her by striking her on the buttocks with a belt, leaving a bruise. Father told the social worker he had been visiting D.P. in mother’s home when he began to feel sick and wanted to rest. The children were running around and being loud, and D.P. would not calm down despite father’s requests. He admitted striking her with his belt, but stated he did not know this was illegal, and that he did not know “why you guys are making such a big deal of this. . . . I don’t think that it’s wrong, that is how I was raised.” At the detention hearing, the court continued the home of parent order, finding this to be an isolated incident.

The adjudication hearing on the petition took place on November 5, 2008. Father testified that on the day of the incident, he was sick with a fever and food poisoning and was not in a normal state of mind. D.P. was running around, screaming “at the top of her lungs.” He tried talking to her, but she would not stop. In retrospect, he believed he overreacted when he hit D.P. with his belt. He admitted spanking D.P. lightly with his hand on three other occasions, but said he had only hit her with the belt this one time. He struck her twice with the belt, and the child cried. Asked whether methods of discipline had been discussed in his parenting class, father replied, “Not that I can remember. They might have touched on it maybe a few minutes.” He did not recall anyone telling him not to use corporal punishment with D.P.; he felt that the social worker’s discussions of corporal punishment were directed toward the mother, not toward him.

The court sustained the petition, ordered father to complete a parent abuser program, and continued the home of parent placement. Father appeals from this order.

DISCUSSION

I

DCFS asks that we dismiss this appeal for lack of jurisdiction and as moot. It refers to the juvenile court’s May 6, 2009 order terminating dependency jurisdiction with

a family law order granting the parents joint legal and physical custody and leaving the visitation schedule to their discretion. DCFS refers in its brief to a request for judicial notice of this order. While we find no such request in the record on appeal, appellant does not dispute DCFS's representation regarding the existence of this termination order and its contents. Thus, for purposes of argument, we will accept that representation as true.

DCFS argues that this court lacks the power to act because the juvenile court no longer has jurisdiction over the case. In its view, appellant should have appealed the termination order in order to keep the dependency proceedings active. Only a party aggrieved may appeal from an order or judgment. (Code. Civ. Proc., § 902.) Father was not aggrieved by the termination of dependency jurisdiction. He was aggrieved by the jurisdictional order, and filed a timely appeal from that appealable order. As we next discuss, an order terminating dependency jurisdiction may render that order moot, but it does not deprive this court of jurisdiction.

An order terminating juvenile court jurisdiction raises an issue of mootness with respect to an appeal from a previous order challenging the exercise of dependency jurisdiction. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431.) But an issue is not moot if the purported error could affect the outcome of subsequent proceedings. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.) Dismissal for mootness must be decided on a case-by-case basis. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

In this case, the juvenile court's termination order left the parents in the same position they were in at the start of the case. The child was placed in the home of parent, with the parents sharing her custody jointly. There were no restrictions on father's contact with the child, and no present detriment flowed from the order. But we agree with the observation of the court in *In re J.K.*, *supra*, 174 Cal.App.4th at page 1432, that "the jurisdictional findings could affect Father in the future, if dependency proceedings were ever initiated, or even contemplated, with regard to the Minor or Father's other children, if any." (See also *In re C.C.*, *supra*, 172 Cal.App.4th at p. 1489 [mother's concern that finding of detriment created possibility of prejudice in subsequent family

law proceedings is speculative, but court declined to dismiss “in an abundance of caution” and because dismissal of appeal operates as affirmance of the underlying order].) Under the facts presented here, we decline to dismiss this appeal.

II

We turn to father’s claim that the court erred in sustaining allegations against him. The standard of proof at the jurisdictional phase of a dependency proceeding is a preponderance of the evidence. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) On appeal, the trial court’s determination is reviewed for substantial evidence, with all conflicts resolved in favor of the prevailing party. (*Ibid.*) Viewing the evidence in accordance with these standards, we find substantial evidence to support the order.

The petition alleged that father “physically abused the two year old child by striking the child’s buttocks with a belt. The child sustained a bruise to the child’s buttocks. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The father’s physical abuse of the child endangers the child’s physical and emotional health and safety, creates a detrimental home environment, and places the child at risk of physical and emotional harm, damage, danger and physical abuse.”

Based on these allegations, the court adjudicated D.P. a dependent child under Welfare and Institutions Code section 300, subdivisions (a) and (b). Under subdivision (a), a child may be declared a dependent child of the court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”

Father struck two-year-old D.P. twice with a belt, hard enough to leave a bruise. This was not a spanking done in a reasonable and age-appropriate manner, nor was it an isolated incident. D.P.'s five-year-old half sister A.A. told the social worker that father sometimes hits her and her seven-year-old brother. "He sometimes uses a belt, but when mommy is at work." Father's use of a belt on these young children on past occasions, considered with his bruising use of a belt on D.P., support the conclusion that D.P. is at risk of serious physical harm.

The court also adjudicated D.P. a dependent child under Welfare and Institutions Code section 300, subdivision (b): "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child" Father's explanation for the incident was that he was feeling ill and needed to rest, and he was unable to get D.P. to stop running around and yelling by talking to her, so he hit her with his belt. Yet he was not the only adult in the house; his mother, who is the child's caregiver, also was at home. He could have sought assistance from her to supervise the child, but he did not do so. In his testimony, father also exhibited a lack of insight about the propriety of corporal punishment, or about other parenting techniques for disciplining children, despite his completion of a parenting class and at least one meeting with the social worker in which these subjects were discussed. The court could conclude from this evidence that father had failed to adequately supervise D.P., creating a substantial risk that D.P. would suffer serious physical harm.

There is substantial evidence to support the order sustaining the petition.

DISPOSITION

The order is affirmed.

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EPSTEIN, P.J.

We concur:

MANELLA, J.

SUZUKAWA, J.